

1 A. Yes.

2 (J. Allin Deposition Exhibit 4 marked for
3 identification.)

4 Q. I show you what we've marked as Exhibit 4. It's a
5 letter dated October 21, 2004 also from Centrus Group. The
6 addressee is covered up again. Re: Allin and Companies and
7 Snow Management Group. The author of the letter apparently
8 was a Robert L. Cohen again. Have you seen this letter
9 before?

10 A. Yes.

11 Q. This refers to a letter of intent regarding the
12 purchase of assets of Snow Management Group by an
13 unidentified entity. Do you understand this to be in
14 reference to Symbiot?

15 A. Yes.

16 (J. Allin Deposition Exhibit 5 marked for
17 identification.)

18 Q. I show you now a note or a notice that I
19 understand came to Heritage anonymously. And I've marked
20 this as Deposition Exhibit 5. Have you ever seen that
21 before today?

22 A. No.

23 Q. Recognizing that you're only seeing that for the
24 first time today, do you have any knowledge of who may have
25 sent this notice to Heritage?

1 A. We suspect we know who sent it.

2 Q. Who do you suspect?

3 A. Karioty.

4 Q. That's the entity that asserted the claim against
5 you and is currently in AAA arbitration?

6 A. Yes.

7 (J. Allin Deposition Exhibit 6 marked for
8 identification.)

9 Q. Mr. Allin, I've presented you with what we've now
10 marked as your Deposition Exhibit 6. This is a compilation
11 of documents that we received from you as part of the
12 discovery in this case. It appears to be spreadsheets and
13 schedules of expenses. And I have several questions
14 regarding these documents. Let me ask you this. Who was
15 responsible for generating these documents?

16 A. The initial work was done by an administrative
17 assistant who worked for us for a short period of time, and
18 then passed on to the administrative assistant who was with
19 us until I was separated from Symbiot.

20 Q. Okay. Who was the original administrative
21 assistant?

22 A. Julie somebody.

23 Q. Can't recall her last name?

24 A. I don't pay attention to other women in my office.

25 Q. That's a smart and diplomatic answer. But in all

1 seriousness, do you have any recollection of her last name?

2 A. I do not. That doesn't mean she didn't have a
3 last name, I just don't know what it was.

4 Q. When did Julie leave the company?

5 A. Oh, I don't think she was there about a week.

6 Q. So she was a short-terminer?

7 A. When I said a short period of time, I mean short.

8 Q. And was her principal responsibility for the week
9 that she was there to work on this?

10 A. Actually, I do believe that's exactly what it was.

11 Q. When was she employed?

12 A. It would have been right about the time Heritage
13 filed the lawsuit.

14 Q. Was she hired to do this?

15 A. No.

16 Q. Heritage employees, are they required to keep any
17 type of time cards or time sheets or other time records?

18 A. I would have no idea what Heritage's policy is for
19 that.

20 Q. That's my mistake. I misspoke. At Allin and
21 Companies and SMG, are your employees required to maintain
22 or keep any time records?

23 A. Generally, no.

24 Q. Are there exceptions? When you say generally.

25 A. There might be from time to time, when we want to

1 bill a customer on a per-hour basis. But it would be few
2 and far between.

3 Q. How about the office or administrative staff; are
4 they required to maintain any time records?

5 A. No. As I've said to others previously, we're not
6 a law firm and we don't keep track to the minute of what
7 everybody is doing.

8 Q. As a percentage, had the Heritage contract gone
9 forward, how large of a portion of your business would it
10 have been?

11 A. Probably somewhere between 15 and 20 percent.

12 Q. When you contracted with Heritage, were you
13 concerned at all, based upon the prior problems you had had
14 with cash flow and service providers who had not been paid
15 at that time -- in other words, did it cause you any concern
16 that you were taking on what sounds, to me, to be a very
17 substantial new customer at a time where you didn't -- you
18 had not had the cash flow to stay current with your service
19 providers to date?

20 A. Not in the least.

21 Q. Why not?

22 A. We had multiple parties who were interested in
23 either becoming equity partners or acquiring SMG. And we
24 had done some in-depth analysis of certain customers, and
25 had not renewed contracts that we knew were not profitable.

1 Allin Companies and Snow Management Group after you sold the
2 snow removal business to Symbiot.

3 A. I was contractually obligated not to compete with
4 the acquired company, with Symbiot.

5 Q. So not only did you not retain the capacity, the
6 equipment or the ability to perform that contract, the
7 arrangement that you entered into with Symbiot expressly
8 precluded you from doing so?

9 A. On my own, correct.

10 Q. Going back to Exhibit 6. Did Mr. Haataja maintain
11 any time records, to your knowledge?

12 A. I don't know.

13 Q. How about Mr. Rohe, R-O-H-E?

14 A. I don't know that either.

15 Q. How about David Dziuban; did he maintain any time
16 records, to your knowledge?

17 A. I don't know.

18 Q. On the right-hand side of the first page of
19 Exhibit 6 you'll see hours at a fixed rate. For example, it
20 looks like for Mr. Dziuban, it says, "Regional manager,
21 dash" -- well, I take that back, I may be misinterpreting
22 this.

23 Do you see about midway down the page now on the
24 left-hand side it says, "Regional manager, dash, SPs, comma,
25 site reviews, comma, budgeting." And if you follow that

1 line across, you'll see an amount, \$3,800. It looks like,
2 "RM, dash, Smallwood." And then 40 hours at \$95 per. Let
3 me ask you first. Do you know the identity of the person to
4 whom this entry relates?

5 A. Yes.

6 Q. And who is that?

7 A. Mike Smallwood.

8 Q. And who is Mike Smallwood?

9 A. He would have been the regional field manager for
10 New England.

11 Q. Was he required to keep time records?

12 A. No.

13 Q. On what terms was he paid?

14 A. Salary plus commission.

15 Q. So you weren't paying him \$95 an hour, were you?

16 A. No.

17 Q. And the 40 hours that's referenced here, do you
18 know where that number came from?

19 A. It would have been an IM. I am surmising that he
20 was contacted and asked how much time he had put into the
21 Heritage contract over the course of our dealings with
22 Heritage.

23 Q. On what basis do you surmise that? Has anyone
24 told you that?

25 A. Nobody has told me that specifically.

1 Q. When you -- let me back up as a foundational
2 matter. Did you give the assignment to the administrative
3 assistants to prepare these schedules?

4 A. Yes.

5 Q. And what were your instructions to the
6 administrative assistants regarding the preparation of these
7 schedules?

8 A. Contact the various people who had input into the
9 Heritage contract and find out how much time they've got.
10 Ascertain direct costs. And put it all together so that I
11 can submit it to counsel.

12 Q. I talked to you a moment ago about Julie -- the
13 first administrative assistant who only worked for you for a
14 short time. What was the name of the second administrative
15 assistant?

16 A. Mary Russell.

17 Q. Where is Mary now; still in Erie?

18 A. Yes.

19 Q. Does she still work for Symbiot?

20 A. No.

21 Q. Did she cease to work for Symbiot at or about the
22 same time that your employment ended?

23 A. The same day.

24 Q. On the right-hand side -- I won't go through each
25 one of these, each one of these entries. But you'll see

1 that the hours are fairly even: 40, 8, 10, 100, 100, 25,
2 200, 80, 40, 100, 100, 100, on Page 1. Is it your
3 understanding that those are numbers that were actually
4 supplied by each of the individuals listed on the schedule?
5 For example, there's Mr. Smallwood at 40, Mr. -- it looks
6 like a J. Casey at 8, J. Terrance at 10, Mr. Hrovat at 100
7 hours. It's your understanding that those are numbers
8 supplied by those individuals?

9 A. Yes.

10 Q. To your knowledge -- recognizing you didn't
11 prepare this. But to your personal knowledge, are there any
12 other time records reflecting the activities of the
13 individuals listed here other than the schedules?

14 A. No.

15 Q. And the new hires that you mentioned earlier in
16 your deposition, Dziuban, Rohe and Haataja -- Haataja.
17 Whatever. Duane.

18 A. That's what we called him.

19 Q. I can see why. Those are listed here as the last
20 three entries on the first page; is that correct?

21 A. That's the way it reads, yes.

22 Q. We'll leaf through this exhibit here in a moment.
23 But as to the individuals listed on Page 1, am I correct
24 that there's no detail as far as when they performed the
25 hours listed on the first page of Exhibit 6?

1 A. Not to my knowledge.

2 Q. So it's basically a round number at a particular
3 hourly rate for each of the affected individuals?

4 A. That's the way it reads, yes.

5 Q. The \$95 an hour, how was that determined?

6 A. My instructions were that we would use rates --
7 no, that's a mistake. The instructions to me were to
8 utilize rates that we would charge a customer if we were
9 doing the work on an hourly rate basis.

10 Q. And where did you receive those instructions, from
11 whom?

12 A. From counsel at the time.

13 Q. We've talked about -- well, we've talked a little
14 bit about the three new hires. But if you would be kind
15 enough on Page 1 to just run down the individuals listed in
16 the second column from the right. And tell me their full
17 names, if you recall them, and what their positions were
18 with Allin and Companies, just so I know who these folks
19 are.

20 A. Okay.

21 Q. Smallwood.

22 A. Michael Smallwood. He was a regional field
23 manager for the northeast region. Jessie Casey was a field
24 manager who lived in Connecticut and worked in Connecticut
25 and New York. Jason Terrance lived in Connecticut and

1 worked Connecticut; field manager. Ralph Hrovat was the
2 regional manager based in New Jersey covering the
3 midAtlantic from roughly Delaware up to lower New York.

4 Ralph Santoro was based in New Jersey and worked
5 mostly in New Jersey. However, Ralph was one of those
6 individuals if we said, drive to Albuquerque and measure a
7 site, he would do it, and not stop until he got home.

8 Dave Gallagher is a production coordinator. And
9 Dave Gallagher lives in Allentown, and his job was to visit
10 sites to interact with service partners or service providers
11 in order to properly educate them about the methodologies we
12 wanted to use in clearing of the sites.

13 Terry Pancura was -- she worked in Erie for Rudy
14 Rieder, and handled the producing of the production sheets.
15 And those sheets would tell service partners where the snow
16 was to be stacked and the different obstacles that were on
17 sites.

18 Chet Zelgowski also worked for Rudy Rieder. And
19 Chet would function as a supervisor to Terry. And he also
20 interacted with service providers on a direct basis.

21 Rudy Rieder was in charge of production. So it
22 was his job to make sure the sites were maintained and
23 equipment got to different locations. Chet and Terry worked
24 for him.

25 Brian Marshal, strategic account manager. He was

1 ultimately going to be responsible for Heritage, and, in
2 fact, did a lot of the leg work putting together --
3 validating the pricing structure that Heritage had provided
4 us with. And he too had interaction with Bob and other
5 individuals at Heritage.

6 Dave, Bryan and Duane we've had discussion about.
7 Do you want me to say that again?

8 Q. That's all right, we've already identified them.

9 A. And for me, that's pretty good, because I'm bad
10 with names.

11 Q. That's not bad. All the individuals except for
12 Dave, Bryan and Duane at the bottom here, though, those were
13 existing employees who were already working on a salaried or
14 a salary commission mixed basis as of the time you entered
15 into the contract with Heritage?

16 A. That's correct. I do not believe any of these
17 individuals were hired as a result of the Heritage contract,
18 but I can't be absolutely certain about that.

19 Q. On the third page of Exhibit 6 there's a notation
20 here, "Business development, \$22,500. J. Allin, 100 hours
21 at \$225 per." Do you see that about three-quarters of the
22 way down the page?

23 A. I do.

24 Q. What does that represent?

25 A. Time that I spent interacting with Jeff and

1 advising him; and near the end of the contract, negotiation;
2 and the interaction I had with the insurance company and
3 Heritage. And it's my time spent.

4 Q. Now, the contract was signed on -- by you on or
5 about October 4, 2004, and terminated one month later. Did
6 those hours take place during that one-month time, or does
7 it cover a broader period of time?

8 A. It covers a broader period of time.

9 Q. What period of time is covered by that?

10 A. From the time Heritage was beginning to insist
11 that we hire people and put them in place, regardless of
12 whether we had a written contract in place, up through the
13 decision to terminate the three individuals who had been
14 hired strictly from Heritage.

15 Q. And when you say at the time Heritage was
16 insisting that you hire people even though you didn't have a
17 written contract, when did that occur?

18 A. Oh, my goodness, that started back in August.
19 They were just unmerciful about, have you hired anybody yet,
20 and do you have people yet, and have you contacted service
21 providers, and we need to get this going, and you're not
22 going to be able to perform.

23 Q. And who said that?

24 A. That was -- most of that contact came from Bob,
25 although we were getting inquiries from all over the country

1 from site people who were in charge of Heritage sites
2 saying, you know, you've got to get going here, it's going
3 to snow. And service providers for Heritage who were
4 calling and saying, we've been doing this work for years,
5 and we've been notified by Heritage that you have the
6 contract; well, that's not entirely true, we don't actually
7 have a signed contract; yeah, but we've got to get going.
8 That kind of thing.

9 Q. The statements that you attributed to Bob
10 Prendergast, were those made to you or Mr. Vernon?

11 A. To Mr. Vernon.

12 Q. So you don't have personal knowledge of those
13 aside from what Mr. Vernon has told you?

14 A. That's accurate.

15 Q. There was a provision in the contract, Exhibit
16 A -- and I know I'm whipsawing you back and forth between
17 documents. Keep that schedule out, though, because I'm
18 going to come right back to it.

19 A. That particular page?

20 Q. Yeah, I'll be coming back to that. If you take a
21 look in the contract, there's a provision in here talking
22 about providing signed subcontractor agreements to Heritage
23 on or before October 31, 2004. I believe it's Paragraph 4.
24 It would be the second sentence. "Contractor shall deliver
25 copies of the signed subcontracts for each property to owner

1 prior to October 31, 2004." Do you know whether that was
2 done?

3 A. We were making a concerted effort to -- my
4 understanding was we were making a concerted effort to
5 comply with that time frame. However, it was my
6 understanding that it was also understood between Jeff and
7 Bob Prendergast that that was an unrealistic expectation,
8 given the fact that the contract was signed on October 3rd.
9 And while we were making progress towards that prior to the
10 actual contract signing, we were going to have to work
11 towards filling higher percentage snow markets first.

12 Q. To your knowledge, prior to October 31, 2004, or
13 at any time prior to the termination of the Heritage
14 contract by Heritage, had any subcontracts been provided to
15 Heritage?

16 A. I don't know.

17 Q. If that happened, you have no knowledge of it.

18 A. That's correct.

19 Q. And any discussions regarding flexibility on that
20 date, you weren't privy to any discussions with the Heritage
21 individuals?

22 A. Not firsthand experience, that's correct.

23 Q. Going back to Exhibit 6. It's fair to say, is it
24 not, that for each of the entries here that specify hours by
25 an individual at a specific rate and then a corresponding

1 amount, none of those amounts were actually spent by SMG,
2 were they?

3 In other words, you guys didn't write a check in
4 these amounts to anyone or pay anyone. You weren't paid an
5 additional \$22,500, Mr. Vernon wasn't paid \$33,000, Linda,
6 whoever that is, where it lists phone calls, office
7 administration, \$1,080 at the top of Page 3, she wasn't paid
8 \$1,080, was she?

9 A. I had stated previously that the amounts there are
10 amounts that we would have charged a customer if we were
11 doing it by the hour.

12 Q. I just want to make sure I'm clear and the record
13 is clear, that none of these amounts here were actually
14 expended by Allin.

15 MR. MARKHAM: You mean -- let me make sure I
16 understand it. Obviously, all these people were
17 paid something.

18 MR. LANZILLO: Right.

19 MR. MARKHAM: When you say they weren't paid
20 \$1,000; they were paid \$1,000 because they get a
21 salary and they get paid every week. So I'm
22 just -- I'm having a hard time understanding
23 exactly what it is you're asking.

24 Q. Other than what these people otherwise would have
25 been paid as part of their normal employment

1 responsibilities, they weren't paid anything on top of that
2 which corresponds to this schedule, were they?

3 A. No.

4 Q. And to the best of your knowledge, none of the
5 hours listed here were determined based upon an
6 administrative assistant consulting any business records.
7 This was -- it came from some other source; is that correct?

8 A. As I previously stated, it would have come from
9 the individual or their supervisor who asked the individual
10 how much time they spent.

11 Q. That was basically your instructions to the
12 administrative assistant?

13 A. Yes. Because I know we don't keep time locks
14 locks for different projects in a fashion which you have
15 asked me.

16 Q. On the fourth page of Exhibit 6 there's a list of
17 expenses. Flight to Fort Lauderdale, John Allin; flight to
18 Fort Lauderdale, Jeff Vernon; ground transportation; hotel.
19 Would that have been in connection with the presentation
20 that you made, or at least some of these in connection with
21 the presentation that you made to Heritage at their property
22 managers' meeting?

23 A. Yes.

24 Q. These dates are separated by approximately one
25 month. Which of the four entries here relates to that

1 particular meeting?

2 A. It would have been the February 22nd date. 1/21
3 would have been the date we paid for the expense.

4 Q. I see. Didn't you regard these expenses as
5 marketing expenses at the time?

6 A. I don't know the answer to that.

7 Q. In other words, if two months down the road
8 Heritage said, you know, we've found what we think is a
9 better deal or we've decided to keep this in-house, these
10 are amounts for which you would not have expected to receive
11 compensation.

12 A. That's correct.

13 Q. The next page, I assume, is a summary that would
14 match up with other schedules. I don't know why it's in
15 this particular order. This is the way it was produced to
16 me. Do you have any knowledge of the content of this page
17 of Exhibit 6?

18 A. No.

19 Q. On Page 6 of Exhibit 6 --

20 A. Show me the page.

21 Q. At the top of the page it's -- upper left-hand
22 corner it says, "Expense, JV travel expense."

23 A. I'm on that page.

24 Q. All right. And then it has -- it says, "Brian
25 Marshal, travel expenses." Are there any expenses for

1 Mr. Marshal?

2 A. I don't know.

3 Q. "Peggy Allin, dash, interviews." Did Mrs. Allin
4 travel to these locations? Is that the point of this
5 schedule?

6 A. That's correct.

7 Q. Legal counsel at the bottom of the page is empty.
8 There's nothing there for legal counsel. Then supplies,
9 labels, envelopes and the like. Do you know how those
10 were -- how those amounts were determined?

11 A. Those would have been direct expenses that we
12 incurred in sending out of the RFP to the service providers.
13 That's noted on the right-hand side.

14 Q. Were those tracked or are those estimates?

15 A. Those would have been tracked.

16 Q. On the next page, appears to be an accounting of
17 time for you and for Mr. Vernon. For yourself individually
18 on 2/18/2004, which, again, is several months before the
19 contract. It says, "Preparation of presentation in
20 Florida." I assume that's the same presentation we
21 discussed earlier at the property managers meeting?

22 A. That's correct.

23 Q. And you put down ten hours?

24 A. Correct.

25 Q. Was that an estimate?

1 A. Yes.

2 Q. And then the next entry, it shows 2/22 through
3 2/24/04, "Trip to present SMG to Heritage." Is that a fair
4 characterization of the purpose of the trip?

5 A. No. And I did not review this before you got it.
6 And, quite frankly, that kind of charges you for our sleep
7 time, which is not kosher.

8 Q. I mean, that does include every hour you were on
9 the trip.

10 A. Yeah. And my instructions to my administrative
11 assistant was to put together the hours that had been
12 expended. Those hours should have been, to be fair, not
13 included.

14 Q. The same thing for Mr. Vernon. 20 hours for prep,
15 48 hours for the trip itself?

16 A. To be fair, yes.

17 (Discussion held off the record.)

18 Q. Where did your administrative assistant get these
19 numbers, though?

20 A. She would have gotten them from me and from Jeff.

21 Q. Your numbers, are these estimates?

22 A. Yes.

23 Q. And the next page, the seventh page of the
24 exhibit, there's several entries for -- and it's just
25 generically phone calls. It says, ops audit, 24 hours at

1 \$45 an hour. To your knowledge, there's no further detail
2 as to who was called, when they were called, the amount of
3 each call, anything like that, is there?

4 A. That's correct.

5 MR. MARKHAM: So it's clear, Rich, I think this
6 may be the eighth page of this exhibit.

7 MR. LANZILLO: Thank you.

8 A. The one that says sites entered in the upper
9 left-hand corner?

10 Q. That's it.

11 A. Make sure we're all talking about the same one.

12 Q. And I think we discussed this earlier. To your
13 knowledge, in terms of the time reflected here that --
14 corresponding to specific individuals, to your knowledge,
15 there's no other records that would more specifically
16 document what was done, when it was done, and the amount of
17 time devoted; is that fair?

18 A. Yes, sir.

19 Q. That will save us some time. And you personally
20 did not discuss the activities or the times referenced here
21 with any of the individuals listed, did you?

22 A. That's correct.

23 Q. Did Mrs. Allin participate in the compilation of
24 this document, to your knowledge?

25 A. I don't know.

1 Q. On the next page -- strike that. Actually, let's
2 skip a couple of pages until you get to the page of
3 Exhibit 6 that has printing only on the left third of the
4 page. And the words at the top of the page begin, "Data
5 enter some of the 110 sites into," and then below that
6 there's a date, 10/20/2004. PAMS, appears to be four hours.
7 And below that, "Calls to prospective bidders." Do you see
8 that?

9 A. I have that page.

10 Q. Do you have any knowledge concerning the
11 activities described here, who performed them, how this
12 information was compiled, other than by your administrative
13 assistant?

14 A. I do not.

15 Q. In the narrative here where it says 10/19/04
16 through 11/11/04, it says 24 -- apparently 24 hours on the
17 RFP package. And below that there's an entry. Let me just
18 read it. "Calls to and from prospective bidders re:
19 confirmation of SPs to receive RFP packets, calls to SP to
20 confirm receipt of RFP package, site specific questions re:
21 scope of work, follow-up calls, regarding Symbiot not
22 responsible for contract." Do you see that?

23 A. I do.

24 Q. First of all, what's the reference to SP, if you
25 know?

1 A. Service provider.

2 Q. And then follow-up calls regarding Symbiot not
3 responsible for contract. Do you know what that's --

4 A. I do not.

5 Q. -- referring to?

6 A. Yes, I do. Once the contract was cancelled, we
7 continued to receive calls from service providers who were
8 still under the impression that we had the contract by that
9 point in time, we were part of Symbiot, or that we were
10 going to be part of Symbiot. And we had to answer those
11 calls.

12 Q. PAMS, do you know what that -- it's all caps. Is
13 that an acronym, someone's name?

14 A. It is.

15 Q. What is it?

16 A. It is the name of the provider account manager
17 system. It is a computer software program.

18 Q. The provider account management software, what
19 does that document? What does that record?

20 A. We had a software program where each site would be
21 entered into the account management software. So if a
22 service provider or a site manager were to call about that
23 particular site, we would log in the time of the call and
24 the nature of the call and the action that was required, if
25 any. And then what action was performed. It's so we can

1 keep an accurate accounting of what takes place on the site.

2 That all has to be entered into the system and get
3 it set up so that we can track what is going on at each
4 particular site as it pertains to inquiries or calls that we
5 get from or to a provider or the site manager or customer.

6 Q. Does the PAMS system include any entries relative
7 to Heritage? In other words, was there any input, to your
8 knowledge, regarding the Heritage sites?

9 A. I don't know specifically. But it generally would
10 not have been activated until it snowed.

11 Q. Okay. And there had been no snow removal services
12 provided at any of those sites as of November 4, to your
13 knowledge; is that correct?

14 A. Correct.

15 Q. On the last page of Exhibit 6, I did want to ask
16 you a quick question. Again, this appears to be a type of
17 summary?

18 A. Which page are we on?

19 Q. The very last page.

20 A. The one that says dates, hours, reason at the top.

21 Q. Yeah.

22 A. Okay.

23 Q. Do you know to whom these entries relate? I mean,
24 we've got dates, hours, reason, June 17, '04. 4.0.
25 Presumably, that's a reference to hours. "Search Internet

1 for local newspapers in various cities needed, contacting
2 newspapers to gather info placing ads. Presenting pricing
3 to JA for approval to place ads."

4 A. Based on the content?

5 Q. Um-hum.

6 A. I believe this would be Peggy Allin's log.

7 Q. As far as who is doing the service here -- or
8 strike that -- who is engaging in the activity described
9 here, do you know who -- is it all Peggy Allin, to your
10 knowledge, or can you tell?

11 A. That's a question that you'll probably have to ask
12 her, because I can't definitively say one way or the other.

13 Q. You have no personal knowledge of the information
14 reflected on this schedule; is that fair?

15 A. It says here I had dinner with the new employees
16 at the Colony Restaurant, third from the bottom. And I do
17 remember that. I don't know what the \$3 refers to.

18 Q. Actually, I would guess that's three hours.

19 A. Three hours, right.

20 Q. Other than that, is there anything else on here
21 concerning what you have personal knowledge?

22 A. I can't say that there is. Other than those items
23 that she says were reviewed with me. I can't specifically
24 state that I remember that date and what that was.

25 Q. Other than the detail such that it is that is

1 provided in Exhibit 6, are you aware of any other
2 documentation or means whereby I can determine whether the
3 hours listed here for these various employees in schedule
4 six, whether those hours were performed before or after the
5 contract date with Heritage in October of 2004?

6 A. I do not.

7 Q. And I take it from your earlier testimony, and
8 correct me if I'm wrong, that you did not participate in any
9 face-to-face or conversational negotiations concerning the
10 content of the contract that we've marked as Exhibit A, your
11 contract with Heritage.

12 A. Face to face with whom?

13 Q. Anyone from Heritage.

14 A. That's correct.

15 Q. You did make some changes, I understand, which are
16 noted in the agreement itself. If you have a copy there,
17 maybe we can go through them quickly. There's handwriting
18 on Page 3, the lower right-hand corner. Is that your
19 handwriting?

20 A. It is.

21 Q. The first set of changes, the first changes appear
22 to be on Page 5. A line is crossed out, and there's
23 initials. Is that your modification?

24 A. It is.

25 Q. Page 7 appears to be dated with your initials as

1 well. And then there's a change on Page 8. Is that your
2 handwriting for that change as well?

3 A. It is.

4 (J. Allin Deposition Exhibit 7 marked for
5 identification.)

6 Q. Mr. Allin, I'm showing you now what I've marked as
7 your Deposition Exhibit 7. This is entitled Snow Removal
8 and Ice Management Services Master Agreement. Do you
9 recognize this document?

10 A. I do.

11 Q. Is this a document prepared by or on behalf of
12 SMG?

13 A. Yes.

14 Q. Would this be the form of the agreement that's
15 referenced in -- I believe it's Paragraph 4 of the agreement
16 between Heritage and you. That's the part of the agreement,
17 the Heritage agreement, that discusses the providing of
18 executed subcontracts to Heritage by SMG on or before
19 October 31, 2004. Is this the form of the document that
20 would have been or should have been provided under the
21 agreement?

22 A. I can't specifically recall what that refers to.

23 Q. Is this the standard form of subcontract that SMG
24 utilized for snow removal services with its service
25 providers?

1 A. Yes.

2 Q. Prior to its execution, did you read the Heritage
3 agreement in its entirety?

4 A. Yes.

5 Q. And as of the execution of that agreement, you had
6 a letter of intent with Symbiot for the sale of the snow
7 removal part of your business, correct?

8 A. Yes.

9 Q. Did you understand, pursuant to Paragraph 13 of
10 the Heritage agreement, that the agreement was not
11 assignable without Heritage's express consent in its sole
12 discretion?

13 A. Yes.

14 Q. When you proceeded with the final agreement with
15 Symbiot to sell the snow removal part of your business to
16 Symbiot, did you understand that you were executing a
17 restrictive covenant which would preclude you from servicing
18 the Heritage agreement after you sold that part of the snow
19 removal business to Symbiot?

20 A. I don't understand the question.

21 Q. You knew, didn't you, that once you signed that
22 agreement with Symbiot, that John Allin, doing business as
23 Allin and Companies and Snow Management Group, would no
24 longer have the right or the ability to provide the services
25 you had contracted to provide to Heritage.

1 A. Correct.

2 MR. MARKHAM: To make it clear too. I mean, his
3 testimony has been that the closing of the Symbiot
4 deal came well after this contract and after the
5 termination of this contract.

6 Q. The closing occurred on November 15, right?

7 A. November 22nd.

8 Q. When was the agreement with Symbiot signed?

9 A. It was in October. I don't recall exact dates.

10 Q. So when you signed the agreement with Symbiot, you
11 understood you were signing an agreement that would render
12 it impossible for you to perform under your contract with
13 Heritage.

14 A. I would take some issue with that. But for me
15 personally, to do it on my own?

16 Q. Yes.

17 A. Yes.

18 Q. Let me show you what will be the final exhibit
19 we'll mark.

20 (J. Allin Deposition Exhibit 8 marked for
21 identification.)

22 Q. Mr. Allin, let me show what you we've marked as
23 your Deposition Exhibit 8. And correct me if I'm wrong.
24 This is a letter dated November 3, 2004, which I believe was
25 faxed to you on November 4, 2004 from Heritage. And this

1 was the notice terminating the contract?

2 A. If I might make a slight correction. This was not
3 faxed to us.

4 Q. Okay. How did you receive this? Via overnight
5 mail, I see.

6 A. That's correct.

7 Q. It's dated November 3. Was it received by you on
8 November 4?

9 A. 4 or 5, I don't recall the exact date.

10 Q. You do recall receiving this notice?

11 A. I do.

12 MR. LANZILLO: Give me one minute. I would just
13 like to talk to Kristina real quick.

14 (Recess held from 11:20 a.m. to 11:25 a.m.)

15 MR. LANZILLO: I am happy to say that I was able
16 to oblige your schedule, including the 15-minute
17 buffer. So those are all the questions I have.

18 MR. MARKHAM: I don't have any questions, and
19 we'll have him read it.

20

21 (Deposition concluded at 11:26 p.m.)

22

23

24

25

C E R T I F I C A T I O N

I, Carol A. Holdnack, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes in the above-captioned matter.

Carol A. Hesnail

Registered Professional Reporter

Dated: 1-25-06

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